

June 14, 2019 4:08 PM
 CLERK OF COURT
 U.S. DISTRICT COURT
 WESTERN DISTRICT OF MICHIGAN
 BY: jlg / SCANNED BY: jlg 6/14/19

**PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A
 PERSON IN STATE CUSTODY**

United States District Court	District: Western District of Michigan
Name (under which you were convicted): Richard Schomaker	Docket or Case No.: 15-0884-OM in 54B District Court; 19-222-AR in 30 th Circuit Court;
Place of Confinement: Ingham County Jail	Prisoner No.: Not yet known
Name of Petitioner (include name under which convicted) Richard Schomaker	Name of Respondent (authorized person having custody): Ingham County Sheriff Scott Wriggelsworth
The Attorney General of the State of: Michigan	

1:19-cv-478

**Gordon J. Quist - US District Judge
 Phillip J. Green - US Magistrate Judge**

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _

54-B District Court, Ingham County Michigan. Located in East Lansing, MI

Please understand that while I am continuing to appeal the judgment / conviction that is the core of this case, the relief I seek is related to a probation violation finding that was issued by the 54B District Court, and regarding which I have been unable to get stayed pending appeal.

(b) Criminal docket or case number: 15-0884 OM

2. Date of judgment of conviction: Original jury verdict on 6-1-19, . Most recently a probation violation and sentencing associated with that same guilty verdict, on March 18, 2019

3. Identify all counts and crimes for which you were convicted and sentenced in this case: _
 Initially found guilty of nuisance violation for fencing materials pulled into the alley right-of-way behind petitioner's property; Subsequently, deemed to have violated probation re; City ordinance, after remand from Circuit Court regarding nuisance And, fence height - fence height being the count of which petitioner was found not guilty.

4. Length of sentence for each count or crime for which you were convicted in this case: _
10 days in Ingham County Jail. This grew out of an original sentence of 12 months probation, which was appealed, voided, and the case remanded to the trial court for an evidentiary hearing covering both the count of which I was found guilty and the count of which I was found not guilty. Subsequently, petitioner found to have violated a probation that was initiated without benefit of appeal as Defense Counsel so completely botched the appeal process that it was unavailable. Motion to reconsider was denied, and petitioner was left to file for Leave to Appeal with the Michigan Court of Appeals. That appeal is currently pending. Defense Counsel filed ex parte Motion for Stay of Enforcement in Circuit Court - which was denied. Petitioner then filed a motion for reconsideration regarding the Motion for Stay of Enforcement, which was also denied. This was denied by Judge Aquilina acting for Judge Canady. As Judge Aquilina originally remanded the case for the evidentiary hearing, petitioner believes she should recuse herself on the Motion for Reconsideration.

5. (a) What was your plea?

Not guilty ☒

Guilty ☐

Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

Pled not guilty to both counts.

6. If you went to trial, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial? Yes ☒ No ☐

8. Did you file a direct appeal to the Michigan Court of Appeals from the judgment of conviction? Yes ☒ No ☐

[I have answered "Yes" to this, however as I appealed first to the Michigan 30th Circuit Court, I am unclear as to whether that renders the case currently before the Michigan Court of Appeals (COA) a "direct appeal"? As the case eventually reached the COA, I will insert the relevant information.]

9. If you did appeal, answer the following:

(a) Date you filed: March 12, 2019

(b) Docket or case number: 347994

(c) Result: The case is still pending at the Michigan Court of Appeals.

(d) Date of result: Not yet known

(e) Grounds raised: Many issues regarding different aspects of "Ineffective Assistance of Counsel"; Denial of the right to poll the jury; violation of Michigan Court Rules as they address the method by which the "alternate" is to be chosen for dismissal prior to deliberation;

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

A copy of the Brief (submitted Pro Se) is attached. No decision has been made by the COA at this time.

(g) Did you seek further review of the decision on appeal by the Michigan Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Date you filed: NA

(2) Docket or case number: NA

(3) Result: NA

(4) Date of result: NA

(5) Grounds raised: NA

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Date you filed: NA

(2) Docket or case number: NA

(3) Result: NA

(4) Date of result: NA

(5) Grounds raised: NA

10. Did you file a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules with respect to the judgment of conviction and sentence? Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Date you filed: _

(2) Name of court: _

(3) Docket or case number: _

(4) Grounds raised: _

(5) Did you receive a hearing where evidence was given on your motion? Yes ☐ No ☐

(6) Result: _

(6) Date of result: _

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) If you sought further review of the decision in the Michigan Court of Appeals, please answer the following:

- (1) Date you filed: _
 - (2) Docket or case number: _
 - (3) Result: _
 - (4) Date of result: _
 - (5) Grounds raised: _
-
-

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you sought further review of the decision in the Michigan Supreme Court, please answer the following:

- (1) Date you filed: _
 - (2) Docket or case number: _
 - (3) Result: _
 - (4) Date of result: _
 - (5) Grounds raised: _
-
-
-

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

12. Other than a direct appeal or a motion for relief from judgment, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

13. If your answer to 12 was "yes," give the following information: [Attach additional sheets of paper, if necessary, to answer the following for each petition, application, or motion you filed.]

- (a) (1) Date you filed: March 22, 2019 by Jonathan Toby White (57988) on behalf of Defendant-Appellant (D-A)
There are deficiencies in the filing and D-A has a deadline of June 25, 2019 to correct.
 - (2) Name of court: 30th Circuit Court, Ingham County Michigan
 - (2) Docket or case number: current case number is 19-222-AR
 - (3) Nature of the proceeding: Claim of Appeal by Right
 - (4) Grounds raised: _
-
-

(5) Did you receive a hearing where evidence was given on your motion? Yes ☐ No ☐

(6) Result: _

(7) Date of result: _

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- (b) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application or motion? Yes ☒ No ☐

If yes, please provide the following:

(1) Date you filed: 3/12/2019

(2) Name of court: Michigan Court of Appeals

(3) Result: Pending

(4) Date of result and case number: _

(5) Grounds raised: _

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

- (c) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

There was a failure to register an appeal on the count of which I was found guilty in the earlier stages of the case. This was due to associate Counsel Luke Goodrich, making a unilateral decision on his own volition to appeal only the probation sentence at that time. The broader questions of the conviction itself has now been raised before the Michigan Court of Appeals.

14. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: _

Petitioner's Due Process rights as they apply to the issue of a Probation Violation, and a hearing on the validity of the assertion that a probation violation had occurred; were violated in multiple ways during what were termed probation violation/pre-sentencing hearings on the matter of the probation violation.

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _

Petitioner was given no opportunity to confront or examine witnesses responsible for claiming that a probation violation had occurred.

At the beginning, of the session from which issued the draconian "pre-sentencing order" (which was written so punitively that it cannot but be intended to frighten defendant in light of its consequences), the judge summoned the two attorneys and the three of them repaired to another room, and there apparently discussed what would be done. Whatever was discussed, it should have been done in open court.

No presentence hearing or report was prepared. Further violations of Due Process

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: 3/22/19 Defense Counsel, Toby White, filed ex parte Motion for Stay of Enforcement pending appeal. When this motion was denied, petitioner file a Motion for Reconsideration on

Name and location of the court where the motion was filed: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available): _

Date of result: _

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _

Name and location of court: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available) : _

Date of result: _

- (d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _

-
- (e) If you did not exhaust your state remedies on Ground One, explain why: _

GROUND TWO: _

Use of sentencing on appeal and remand as a punitive measure

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): _

The original sentencing in the core case was for 12 months probation, which was overturned at the Circuit Court, where it was remanded to the 54B District Court for an "evidentiary hearing"; at the evidentiary hearing the prosecution "manufactured" a definition of a retaining wall which when petitioner sought to verify it, was no longer extant at that location. Petitioner's wall was then declared to be a fence and consequently his boundary fence + wall was declared to be a wall. When petitioner was remanded to the trial court for an evidentiary hearing he was exposed to a sentencing which is deemed unrelated to the original case and charges, and which is arguably more punitive than the original overturned sentence. A probation period of 3 months (later expanded to 4 months without notification, and on grounds which are plausibly an attempt to "catch" defendant at something) allows a prosecution which is intent on abuse of prosecutorial power a more manageable time period in which to accomplish its goal. If petitioner were to violate a law within 12 months that might look normal, but if some infraction (real or imagined) could be constructed within a few months, then the 3 month or so probation would be ostensibly less punitive, but in reality is a prosecutor's attempt to rush petitioner to a judgment desired by the prosecutor. The 3 month probation then is an attempt aggressively seek to end the case against petitioner, quickly and in a manner less burdensome to the prosecution.

- (b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _

The issue did not present itself until the case was remanded to the trial court after appeal

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _

Name and location of the court where the motion was filed: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available): _

Date of result: _

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _

Name and location of court: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available) : _

Date of result: _

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _

(e) If you did not exhaust your state remedies on Ground Two, explain why: _

No opportunity to make it part of the underlying case which is currently at the COA has existed as this is part of the evidential hearing matter which is under appeal.

GROUND THREE: _

The original conviction is founded on the premise that petitioner scattered his own fencing materials into the alley right-of-way, for some reason or according to some logic that petitioner is at a loss to comprehend; Petitioner elsewhere alleges that the prosecution as well as the trial court committed errors of procedure and of law, that enabled the prosecution to adjust the jury more to its own desires. As such defendant was denied his right to a trial by a fair and impartial jury.

Petitioner feels that this Court should be able to find that the original conviction was flawed as it found petitioner guilty of a crime for actions that no competent jury operating fairly and impartially, could find petitioner guilty of beyond a reasonable doubt.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): _

The selection of the alternate juror for dismissal is to be done in open court with the slips of paper containing the names of the jurors visible to all parties. In the 54B District Court, the process is this: The judge announces from the bench that he has conducted a randomized selection, and then recites the name of the juror to be dismissed.

In addition, the prosecution went to some trouble to insure that petitioner was unaware of an order signed by associate defense counsel Luke Goodrich, which stated that all motions in the case were required to be submitted within 28 days. The prosecution had already been informed by petitioner than he understood that he was under some form of investigation, and that petitioner intended to file a motion so that jury selection in the case at hand would need to be delayed until the results of whatever investigation was in process could be resolved. Otherwise petitioner could not be certain of the impartiality of the jury.

Associate counsel concealed the existence of this order from defendant, and if defendant is any judge of behavior, primary counsel was unaware of the validity of the rationale that would enable associate counsel to ethically enter into such an agreement, until well after trial. When defendant asked defense counsel to poll the jury as to how they could have arrived at the guilty verdict, he informed defendant that the juror who had originally been the 7th or alternate juror, had high-jacked the deliberation process, become foreman, and imposed his personality to get the result he wanted. This 7th juror was a public employee and should have been excluded by counsel. In addition, this juror stated to defense counsel, that defendant's fence was: a hazard before it was strewn in the alley, a hazard when it had been removed and restructured by defendant, and that it was still a hazard today. Effectively, this juror had exposed the fact that he knew the current state of defendant's fence. The only way that the juror could know the current state of defendant's fence was if he had visited the site, which he had been expressed forbidden to do as part of the jury instructions. When defendant argued this issue with defense counsel, defense counsel said: "They're not going to give you jury nullification."

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _

Name and location of the court where the motion was filed: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available): _

Date of result: _

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following: Date

you filed: _

Name and location of court: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available) : _

Date of result: _

- (d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _

It is part of my brief filed with the Michigan Court of Appeals.

-
- (e) If you did not exhaust your state remedies on Ground Three, explain why: _

The case has not been decided by the Court of Appeals

GROUND FOUR: _

The probation violation -which should not exist in petitioner's opinion - is founded in large part on the idea that defendant did not attempt to comply with the trial court's demands. The trial court kept insisting on the City's need to inspect the interior of defendant's wall (which the City improperly claimed was a fence), because it had been decreed that the retaining wall was only a retaining wall to the depth of its backfill. These inspections occurred even though defendant repeatedly objected to counsel that they were not occurring within the scope decreed in court. Defendant repeatedly reconfigured his wall and during inspections demonstrated each time how he was complying with even the City's fanciful definition of a retaining wall. The city conducted many inspections of defendant's property without permission and in the absence of any defense representation. When the City inspected on January 29, 2019, having seen that his wall was as described in court, claimed that as he had not made the changes on the complete boundary of his property it did not matter.

- (a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): _

When defendant alerted defense counsel that he had a witness to the City's repeated unlawful inspections, defense counsel issued a cease and desist letter.

As defendant discussed the issue of a probation violation with defense counsel, defendant repeatedly asked "what evidence can they possibly have, all of their illegal inspections are unusable". Defense counsel would respond "I don't know".

When defendant was found guilty of a probation violation, the City presented only pictures external to his property, claiming against that the fence height was non-compliant. All attempts by defendant to comply with the court's demands were disregarded, and defendant was found guilty of a probation violation, because he had not changed the fence height as viewed from outside the property to the city's liking. What was the reason that the City needed to enter defendant's property at all? Fence height please recall was the count on which the jury ruled "not guilty".

The City when in defendant's yard did damage which may not be obvious to others but which defendant could identify immediately. Some of this damage was minor, but one consequence of a probably inadvertent blundering by a City inspector, resulted in a damage whose tax on defendant's time is measured in months.

To the extent that the City cannot measure what is suitable, that the City cannot be consistent in what they are requiring, and that it has no basis for its pronouncements on suitable materials, and as the City inspector cannot reference the correct code for residential properties; the verdict as well as the ordinances involved should be Void for Vagueness

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _

Again the problem is a consequence of the evidentiary hearing and its follow-on. It was not available for discussion in the original case appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _

Name and location of the court where the motion was filed: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available): _

Date of result: _

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following: Date you filed: _

Name and location of court: _

Docket or case number: _

Result (attach a copy of the court's opinion and order, if available) : _

Date of result: _

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _

(e) If you did not exhaust your state remedies on Ground Four, explain why: _

Again the problem is a consequence of the evidentiary hearing and its follow-on. It was not available for discussion in the

original case appeal.

15. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

16. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

The original case has been granted a Leave to Appeal at the Michigan COA. The docket number there is: 347994

The Probation Violation is under appeal at the 30th Circuit Court where petitioner must correct the filing by June 25, 2019, and will have some difficulty meeting this deadline from jail. Petitioner believes that this is the point for the decision to incarcerate at this time. This Claim of Appeal has case number 19-222-AR.

17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: No such hearing occurred

(b) At arraignment and plea: Pro Se

(c) At trial: Jonathan Toby White (P57988), Luke Goodrich (.....) associate defense counsel

(d) At sentencing: Jonathan Toby White (P57988), Luke Goodrich(P72090), associate defense counsel

(e) On appeal: in some instances Jonathan Toby White (P57988), in other matters (soon to be all matters) Pro Se

(f) In any post-conviction proceeding: Jonathan Toby White (P57988), and Pro

(g) On appeal from any adverse ruling in a post-conviction proceeding: Jonathan Toby White (P57988), and Pro Se

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging?
Yes ☐ No ☒

(a) If so, give the name and location of court which imposed the sentence to be served in the future: _

(b) Give the date the other sentence was imposed: _

(c) Give the length of the above sentence: _

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?
Yes ☐ No ☐

19. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

The petition is addressing a sentencing from March 18, 2019 even though the judgment of conviction is June 1, 2016.

*The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant him or her the relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was

delivered to the Federal District Court, Lansing, MI

June 14, 2019.

Signature of Petitioner

Richard Schomaker, Petitioner

Date _____

191 ORCHARD ST.
EAST LANSING, MI 48823